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A SURVEY OF THE LITERATURE OF MILITARY LAW — A SELECTIVE BIBLIOGRAPHY

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INTRODUCTION

In this article the authors attempt to set out, within the space allotted to them, a consideration of the significant writings in the field of American military law — as they understand the term.¹ Apparently no similar attempt to construct such a bibliography has heretofore been made.²

To begin with, a definition of terms is important. Military law, in a broad sense, may be said to include martial law,³ military government,⁴ the law of war,⁵ and military justice. For purposes of this article, military law is the exercise of military jurisdiction “by a government in the execution of that branch of the municipal law which regulates its military establishment,”⁶ or, as it is popularly known, military justice. It is to the literature dealing with military justice that this article is primarily devoted.⁷

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1. “The scope of what is called Military Law has always been indefinite, and its topical analysis has varied with different authors.” Preface, J. H. WIGMORE, *A SOURCE BOOK OF MILITARY LAW AND WAR TIME LEGISLATION* (Prepared by the War Department Committee on Education and Special Training 1919).

2. An article by Pulling, *A Bibliography of Military and Naval Law*, 15 *LAW LIBRARY JOURNAL* 7 (1922) is, in fact, an announcement that the writer had collected a body of material on the subject and was considering publication of a bibliography. Apparently this was not done.

3. Martial law is the term used to describe the exercise of military authority domestically, when, by reason of rebellion, invasion or catastrophe, the ordinary processes of law have been broken down and a military commander has taken charge of the civilian scene. It is, in fact, no law at all but the exercise of the will of the military commander.

4. Military government is the descriptive term for the exercise of military jurisdiction “by a belligerent occupying enemy territory.” *MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951*, ¶ 2 [Exec. Order No. 10214, 16 *FED. REG.* 1303-1419 (1951)], hereinafter referred to as the *MANUAL FOR COURTS-MARTIAL 1951*, and cited as *M.C.M. 1951*.

5. The law of war is a part of International Law. “From the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals.” *Ex parte Quirin*, 317 U.S. 1, 27-28, 63 *Sup. Ct.* 2, 87 *L. Ed.* 3 (1942).

6. *M.C.M. 1951*, ¶ 1.

7. See Karlen and Pepper, *The Scope of Military Justice*, 43 *J. CRIM. L. & CRIMINOLOGY AND POLICE SCI.* 285 (1952). We lay to one side, without consideration, those frequently sensational and generally inaccurate articles that have appeared in various publications of general public consumption. Apparently, there are scholars and others who write about military law who do not share the feelings of the outstanding authority in the field of military law, Colonel Winthrop, who, in the preface of the first edition of his *MILITARY LAW AND PRECEDENTS*, said: “That Military Law, from its early origin and historical

We further limit our coverage as to time. There exists a tremendous amount of material pertaining to military law as it used to be that has little appeal for those handling current military law problems.⁸ Our aim is to furnish bibliographical information about military law literature, both old and new, that will be valuable to those concerned with the various aspects of the present military law and, at the same time, useful, at least as a starting point, to those interested in the historical development of military law.

We have divided the relevant publications into four broad categories, as follows: (1) texts and treatises; (2) official publications (including manuals and various reviewing authorities' decisions and opinions); (3) miscellaneous materials (including service publications not properly classified as official); and (4) standard legal periodical literature.

For a variety of reasons, some of the material referred to herein is not readily available to members of the bar. However, as was stated in a recent law review article, "it may be said with assurance that the military authorities will extend every courtesy to the civilian lawyer and will render such assistance as they can to enable him to discharge properly his responsibilities to the accused. They, too, have an interest in the accused and are anxious only in seeing that justice is done."⁹

TEXTS AND TREATISES

The literature of military law has not had the benefit of the vast amount of scholarly learning and research which contributed so much to the development of the law in other specialized fields, and the production of generally recognized texts, such as Wigmore, Williston and others. There are only a handful of books in this field that have more than historical interest. Of this handful, one is unrevised for more than 50 years, one was last revised prior to World War I and the others are new. We here treat, in varying degrees of detail, the select group of texts and treatises that have value, refer to a few of the others by name and dismiss completely the remainder. Many of these last are avail-

associations, its experience of many wars, its moderation in time of peace, its scrupulous regard of honor, its inflexible discipline, its simplicity, and its strength, is fairly entitled to consideration and study, is a belief of the author which he trusts his readers will share."

8. The codes of military justice as applied to our various armed forces have undergone extensive changes in recent years climaxed by the enactment of the Act of 5 May 1950, Pub. L. No. 506, 81st Cong., c. 169, § 1; 64 STAT. 108 (1950), 50 U.S.C.A. §§ 551-736 (1951), hereinafter referred to as the Uniform Code of Military Justice and cited as UCMJ. For the Navy and Coast Guard, more so than for the Army and Air Force, the UCMJ represented a comprehensive revision of the procedural and substantive aspects of military justice. For the Army and Air Force, a substantial revision occurred in 1948 when Title II of the Act of 24 June 1948, Pub. L. No. 759, 80th Cong., 62 STAT. 627 (1948), became law for those services.

9. Sellingsloh and Hodson, *Civilian Counsel in General Court-Martial Cases under the Uniform Code of Military Justice*, 1952 WASH. U.L.Q. 383.

able only in the major law libraries and are long out of print.

*Winthrop, Military Law and Precedents.*¹⁰ — It is not too much to say that up to the close of the Second World War this was the only treatise on military law of substantial utility to the practitioner. It is the standard text on military law, and even today provides one of the principal sources of precedent readily available. In his preface to the first edition, Colonel Winthrop says:

“The author, however, will be fully recompensed for his labors if the same shall result in inspiring an interest in the study of Military Law as a department of legal science not heretofore duly recognized. The lawyer who, if he has not been led into the old error of confounding the military law proper with martial law, has perhaps viewed it as consisting merely of an unimportant and uninteresting scheme of discipline, will, it is hoped, discover in these pages that there is a military code of greater age and dignity and of a more elevated tone than any existing American civil code, as also a military procedure, which, by its freedom from the technical forms and obstructive habits that embarrass and delay the operations of the civil courts, is enabled to result in a summary and efficient administration of justice well worthy of respect and imitation. The military student, on the other hand, in examining the cases cited, as adjudicated by the courts which expound the international law, the common law, the criminal law, and the maritime law, will, it is thought, more fully appreciate the connection between the military law and the general law of the land; — will perceive that the former, while distinct and individual, is not an isolated exception, but a branch of the great body of the public law, variously and harmoniously affiliated with the other branches of the system.”

Winthrop's work covers the procedure of military courts from arrest to sentence, and then considers exhaustively the substantive law of the Articles of War, with annotations to pertinent court decisions, the opinions of the Attorney General, and of the Judge Advocate General of the Army. Many English and American precedents of great historical interest are contained in the appendices. The work, though old, is invaluable. It is still in print and is a necessity for anyone doing serious research or practicing in the field of military law.¹¹

*Davis, A Treatise on the Military Law of the United States.*¹² — This work follows the general plan of Winthrop's treatise. However, the historical aspects of the subject are not covered so well as they are in

10. WINTHROP, *MILITARY LAW AND PRECEDENTS* (2d ed., 1920 reprint). Pp. 1101. Government Printing Office (hereinafter referred to as G.P.O.), Washington, D.C. (1st ed. 1886, 2d ed. 1896).

11. Some indication of the position Winthrop occupies is found in the fact that his work is frequently relied on by courts and writers concerned with military law problems. An examination of the decisions of the United States Court of Military Appeals will disclose that Winthrop is frequently cited in situations involving complex military law questions.

12. DAVIS, *A TREATISE ON THE MILITARY LAW OF THE UNITED STATES* (1898). Pp. xv, 813. John Wiley and Sons, New York, N.Y. (2d ed. revised 1904, 3d ed. revised 1914).

Winthrop's work, nor is the treatment of the substantive aspects of the Articles of War as thorough. It is, nevertheless, a useful reference book. The appendices contain some of the early American legislation, and early military law forms which may be of interest to historians.

*Philos, Handbook of Court-Martial Law.*¹³ — In the preface of this book the author states, in part:

"it is intended that the Handbook complement the Manual by developing points that the Manual could treat only in a general manner because of obvious space limitations, and by setting forth actual cases which illustrate and clarify the various provisions of the Manual . . . The Handbook was also revised with a view toward informing the accused of his basic rights under military law in terms that he can understand, with or without the assistance of his counsel. In order to facilitate this understanding, the first paragraph of the present volume traces the various Articles of the Uniform Code back to their sources in the Constitution; and throughout the Handbook, various decisions of the United States Supreme Court and the lower federal courts as well as provisions of the United States Criminal Code, are cited in order to illustrate the marked similarity between the military and the more familiar civil concepts of criminal law . . . it is intended to keep this edition current by adding new material at regular intervals which will contain full and complete references to decisions from all of the military services."¹⁴

In February, 1952, the School of Naval Justice was directed by the Chief of Naval Personnel to review this book and evaluate it for possible use by the Navy. The official reply of the School stated in substance:

- (a) That since the preponderance of material referred to in the Handbook related to the Army or Air Force, the usefulness of the publication for Navy precedent was limited.
- (b) That since the Handbook contained only digests of reported cases without access to the complete texts of the opinions or decisions cited, there is, "ever present the danger of drawing an erroneous conclusion."
- (c) That the Handbook is primarily useful in augmenting research, and that as such it would be useful to officers with legal background or to officers who have had considerable experience in researching military law problems, as a point of beginning.

It is the opinion of the authors of the present article that the *Handbook* does have a place on the shelf of every lawyer practicing in the field of military law.¹⁵

13. PHILLOS, *HANDBOOK OF COURT-MARTIAL LAW* (rev. ed. 1951). Pp. xlv, 583. Callaghan & Company, Chicago, Ill.

14. For this purpose, a back cover pocket has been provided to accommodate anticipated supplements.

15. Concerning citations, the *HANDBOOK* refers to the Court-Martial Reports of the Air Force as "CMR" which is now the citation for the new Court-Martial Reports.

Of particular value is the parallel reference table leading the reader from the Articles of War, 1948 (which the author incorrectly refers to as 1949), Articles for the Government of the Navy and the Articles for the Discipline of the U. S. Coast Guard, to the Uniform Code of Military Justice and to the *Handbook*.

Military Jurisprudence (Cases and Materials).¹⁶— This book and the one considered next in this article are recent works that lend themselves to use as casebooks. In the introduction of *Military Jurisprudence* it is said:

“The increase of strength of the Armed Forces of the United States has made the legal profession unusually conscious of military law and its relationship to civilian affairs. Not only has it caused many civilian attorneys to enter upon duty with one of the Armed Services, but it has made a knowledge of military law virtually a necessity to the attorney in civilian life in view of the fact that an increasing number of persons, including civilian as well as military personnel, are seeking professional legal advice on problems connected with the military services. The editorial staff of the publisher has prepared this volume in order that those interested in the impact of military law may have a publication of convenient size, containing the basic cases and expressions of the courts.”

This is an ambitious work which, according to its introduction, purports:

“to include, either in full or substantially so, selected important American cases, with emphasis upon federal jurisdictions, and to quote brief portions of opinions of courts in other cases, with statutory references and quotations from leading treatises where appropriate. Editorial comment has been kept at a minimum; for the most part, problems have been stated, followed by opinions of the courts concerning them rather than conclusions of the editors.”

While it is claimed in the introduction that “there has been no attempt to emphasize cases peculiar to the Army” it is nevertheless patent that more coverage has been given to Army situations and materials than to situations and materials from the other services. One understandable reason for this lies in the fact that the Articles of War (1948), under which the Army and Air Force operated prior to 31 May 1951, were similar in many respects to the Uniform Code of Mili-

16. The title page contains the following: “Selected and edited by the Editorial Staff of the Publisher with the advice and counsel of a group of officers of the Judge Advocate General’s Corps, United States Army.” The Lawyers Co-operative Publishing Co., Rochester, N.Y. (1951). Pp. xxxiv, 1343. The scope of this work includes more than the field we have identified as military law. Some of its chapter titles are: Military Authority, Its Nature and Sources Generally; Limitations upon Military Authority; Relation of the Military to Civilian Authority; Criminal and Civil Liability Arising from Performance of Military Duty; Military Commissions and Courts of Inquiry; Martial Law; and the Law of War.

tary Justice and therefore produced opinions and decisions usable to those dealing with the Uniform Code of Military Justice. Too, the distinguished Army personnel who assisted in the preparation of this work undoubtedly looked to familiar situations to cite as authority for particular points.

*Schiller, Military Law.*¹⁷—This volume is a part of the American Casebook Series. As an indication of the purpose of the book and the scope of its contents, the author, in the preface, says:

“The proper distribution of materials destined for a two or three point course in a law school is a matter that will differ with each author of a case-book. In the opinion of some, a course in Military Law in a civilian law school need not treat courts-martial and court-martial procedure as exhaustively as would be done in a Judge Advocate’s school. The Articles of the Uniform Code of Military Justice and the current Manual for Courts-Martial are readily available to supplement the materials presented in this volume. Enough of current legislation and regulation and of past precedent in court decisions and Judge Advocates General opinions has been offered, it is believed, to satisfy the requirements of legal education in military justice. On the other hand, the student who may have occasion to treat of military law must be aware of the constitutional extent of military power, the organization of the armed forces, and the relation between civil and military jurisdiction. The author has reason to believe, on the basis of many years experience, that the balance provided in this volume will satisfy the objective in mind, namely, a second or third year course in Military Law in a civilian law school.”

It may be that the author has limited the coverage too much to satisfy the requirements of some law school instructors in military law. However, for the coverage that the book attains, it qualifies as an up-to-date compilation of cases and materials in the field of military justice that should have notable utility.

*Edwards and Decker, The Serviceman and the Law.*¹⁸—In the preface it is said:

“This book, formerly ‘The Soldier and the Law’, is designed to tell how and why the law in the armed forces differs from that in civilian life, how to practice preventive discipline (the avoidance of punitive action by prevention of offenses) by good leadership, and how to proceed simply and expeditiously with trial and punishment when good leadership has not prevented the commission of an offense. The work is not a substitute for the Manual for Courts-Martial, United States, 1951—it is a supplement. It is not official in any respect, although care has been taken to provide accuracy of statement.”

17. SCHILLER, *MILITARY LAW* (1952). Pp. xxxiv, 590. West Publishing Co., St. Paul, Minn. This is a revision of the following earlier work by the same author: *MILITARY LAW AND DEFENSE LEGISLATION* (1941). Pp. xxxiv, 647. West Publishing Co., St. Paul, Minn.

18. EDWARDS AND DECKER, *THE SERVICEMAN AND THE LAW* (6th ed. 1951). Pp. x, 401. The Military Service Publishing Company, Harrisburg, Pa.

This is a concise work, containing humorous illustrations, which presents its material in an interesting and simplified manner. It qualifies as a volume that considers military law in a text that can be understood by the average layman and, at the same time, contains information of interest and of use to the lawyer. In its appendix are contained, among other things, suggested check lists for trial and defense counsel and a summarized record of trial by a special court-martial. Chapter 17 contains 36 problems in procedure (with solutions) and Chapter 18 contains a true-false examination (215 questions) in military law.

Wiener, *The Uniform Code of Military Justice*.¹⁹—This book is divided into three parts. The first contains a brief (24 page) explanation of the Uniform Code of Military Justice and its more radical changes to pre-existing military law. Colonel Wiener's opinion of some of these changes may reflect "too accurately some of the author's most cherished dislikes."²⁰ The second part of the book consists of a complete text of the Code (with the comparative Articles of War text) and certain commentaries (the author's, those of the committee that drafted the Code and excerpts from the Congressional legislative history). The third part of the book consists of cross reference tables.²¹

This book was prepared before the publication of the *Manual for Courts-Martial 1951*, although the author does refer to the *Manual for Courts-Martial, U. S. Army, 1949*, to which the new *Manual* bears strong resemblance in many particulars. Notwithstanding the fact that its publication preceded the promulgation of the new *Manual*, this book is a handy, quick reference guide that serves a useful purpose.

Brandenburg, *Navy Evidence*.²²—As a general statement, it is in the field of evidence that the Navy courts-martial procedure has been least changed by the advent of the Uniform Code of Military Justice.²³

19. WIENER, *THE UNIFORM CODE OF MILITARY JUSTICE* (1950). Pp. 275. Combat Forces Press, Washington, D.C.

20. WIENER, *EFFECTIVE APPELLATE ADVOCACY* (1950). Pp. xv, 591. Prentice-Hall, Inc., New York, N.Y.

21. See also TILLOTSON, *INDEX—DIGEST TO THE UNIFORM CODE OF MILITARY JUSTICE* (1951). Pp. v, 162. The Military Service Publishing Co., Harrisburg, Pa., which is claimed to be a book "designed to enable anyone to find readily any provision of the Uniform Code of Military Justice in question and also to connect such provision with the pertinent references in the *MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951*." A prior work by this author is: *THE ARTICLES OF WAR—ANNOTATED* (5th rev. ed. 1949). Pp. xxii, 408. The Military Service Publishing Co., Harrisburg, Pa., (which includes all changes up to February 1, 1949).

22. BRANDENBURG, *NAVY EVIDENCE—A DIGEST OF THE LAW OF EVIDENCE AS STATED IN NAVY COURT-MARTIAL ORDERS, 1916-1951* (1952). Pp. x, 179. Jones Composition Co., Washington, D.C.

23. M.C.M. 1951, ¶ 137, which relates to rules of evidence, states in part: "The rules stated in this chapter are applicable in cases before courts-martial, including summary courts-martial. So far as not otherwise prescribed in this manual, the rules of evidence generally recognized in the trial of criminal cases in the United States district courts or, when not inconsistent with such rules, at common law will be applied by courts-martial."

In this work, as stated in the preface, the author proposes: "simply to provide for Navy court-martial practitioners who are not lawyers a digest of all past rulings [between 1916 and 1951] on the conventional evidence questions that have arisen in trials before Navy courts-martial."

This digest was compiled by subjecting the Court-Martial Orders published between 1916 and 1951 to a close reading and then preparing abstracts of those Court-Martial Orders that touched on the law of evidence. These abstracts were then assembled under conventional headings in chronological order.

This recent publication serves as a convenient one-volume medium of initial research within its announced scope, and as a springboard to the full Court-Martial Orders referred to in it. A limitation of this compilation rests in the fact that it does not reflect any of the changes in the rules of evidence brought about by the Uniform Code of Military Justice.

*Snedeker, Military Justice Under the Uniform Code.*²⁴ — This work is as yet unpublished, but the authors of this article have had the privilege of examining it in proof form. It is the present expectation of the publisher that the book will be published in February, 1953. It appears to be an exhaustive treatment of the field of military justice in the sense in which the present article uses the term.

General Snedeker divides his treatise into the following three parts: (1) The Background of United States Military Justice; (2) Military Justice Under the Uniform Code; and (3) Offenses Against Military Law.

As any scholarly work on military law must, this book frequently cites *Winthrop*. Whether the General's effort will eventually replace *Winthrop* as the standard text is a determination the future will resolve.

Miscellaneous. — In addition to those we have referred to, the reader may find the following texts of some historical interest:

W. O. DeHart, *Observations on Military Law*, Wiley and Putnam, New York, 1846, pp. viii, 433.

E. S. Dudley, *Military Law and the Procedure of Courts-Martial*, Third Edition, J. Wiley and Sons, New York, 1910, pp. xi, 656.

R. J. Bishop and H. H. Brandenburg, *Navy Trial Digest*, Wolfer Engraving Co., Los Angeles, 1947, pp. 206.

S. V. Benet, *Military Law and Practice of Courts-Martial*, D. Van Nostrand, New York, 1862, pp. 2, viii, 237.

24. SNEDEKER, *MILITARY JUSTICE UNDER THE UNIFORM CODE* (1953). Little, Brown and Co., Boston, Mass.

OFFICIAL PUBLICATIONS

Manuals for Courts-Martial

Probably because military justice has traditionally been administered, for the most part, by persons not skilled in the law (and is so administered in large measure today), the Armed Forces have long made a practice of promulgating, under various titles, publications that amount to books of instructions. At least in the case of the Navy these publications appear to have been issued originally without sanction of law.²⁵ The general purpose of these instructions or regulations was to prescribe the procedural rules for bringing an accused to trial by court-martial, for conducting the trial and for accomplishing the required stages of review. They contained applicable rules of evidence, limited permissible punishments and spelled out, with greater particularity than did the statutory provisions they implemented, the elements of the offenses enumerated in the particular statutes involved.

The "book of instruction" that implements the Uniform Code of Military Justice is called the *Manual for Courts-Martial, United States 1951*. It was promulgated by Executive Order.²⁶

The appendices of this *Manual* include the Constitution, the Code itself, a thorough collection of various forms used in military law and a trial guide for the procedural aspects of courts-martial. The provisions of the *Manual* are on the same legal level as the provisions of the Code.²⁷

From first hand experience developed over a period of eighteen months of teaching the new Code, the authors have found that the *Manual* contains many ambiguities and passages that are obscure and difficult to construe. A classic example of the latter is paragraph 127c, section B, which deals with permissible additional punishments.²⁸ The School of Naval Justice has made no less than three suggested revisions

25. 6 OPS. ATT'Y GEN. 10 (1853).

26. Exec. Order No. 10214, 16 FED. REG. 1303-1419 (1951), which states, in part: "This manual shall be in force and effect in the armed forces of the United States on and after May 31, 1951, with respect to all court-martial processes taken on and after May 31, 1951 . . ." The President's authority to promulgate this manual is contained in UCMJ art. 36a which provides: "(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions and other military tribunals may be prescribed by the President by regulations which shall, so far as he deems practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which shall not be contrary to or inconsistent with this code."

27. *United States v. Lucas* (No. 7), 1 CMR 19, 22 (U.S.C.M.A. 1951).

28. About another part of this same paragraph, the Navy Board of Review, in *United States v. Murphy*, (5-52-S-798, decided 12 November 1952), said, in part: "It appears from the legal officer's statements that there is some difficulty in understanding paragraph 127c, MCM, 1951, page 215, in regard to the Table of Maximum Punishments. It is unfortunate, but nevertheless true, that, due to disagreements between different boards of review as to the construction of this paragraph, an accused may or may not be required to serve the sentence imposed . . ."

of this paragraph for purposes of clarity and we are certain that many more suggestions originated in the field.

Some have said of the *Manual* that it tends to cross reference the reader to confusion. However, it is a popular pastime for members of the military to find fault with manuals that interpret military law. No doubt the perfect manual will never be published. The authors of this article are of the opinion that the *Manual for Courts-Martial 1951* is in need of revision but cannot agree with those harsh critics who, without a bill of either destructive or constructive particulars, recommend that this *Manual* be thrown away and that a new one be written.

The present *Manual* was produced under great pressure because of the time limit imposed by the Code. It is remarkable that a manual so complete could have been produced in the time allotted and considering the service differences of practices and nomenclature that had to be resolved.

As an aid in interpreting and understanding the new *Manual*, one of the most valuable publications in existence is a pamphlet²⁹ which contains a short history of the preparation of the *Manual* together with brief discussions of the legal and legislative considerations involved in the drafting of the book. Its preface indicates that, "With minor exceptions, the discussions of the various subjects were written by the officers who prepared the initial drafts of the comparable portions of the manual."

The Manual for Courts-Martial 1951 follows, in great measure, the predecessor Army and Air Force manuals.³⁰ For the Navy, the new *Manual* represented a radical change from *Naval Courts and Boards*, which was the name of the Navy's "book of instruction" for courts-martial.³¹

The Coast Guard is now subject to the Uniform Code of Military

29. LEGAL AND LEGISLATIVE BASIS, MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951 (1951). Pp. vi. 301. G.P.O. Copies of this splendid work are, unfortunately, not readily available. It is hoped that some agency will undertake the task of giving it wide distribution.

30. (a) MANUAL FOR COURTS-MARTIAL, U.S. Army, 1949, promulgated by Exec. Order No. 10020 (1948), by virtue of the authority contained in Art. 38 of the 1948 Articles of War. (b) MANUAL FOR COURTS-MARTIAL, U.S. AIR FORCE, 1949, promulgated by Exec. Order No. 10026 (1949). This manual differed from the 1949 Army MANUAL only insofar as to make the terminology applicable to the Air Force. The prior Army manuals were: MANUAL FOR COURTS-MARTIAL, U.S. ARMY, 1928; MANUAL FOR COURTS-MARTIAL, U.S. ARMY, 1921; and MANUAL FOR COURTS-MARTIAL, U.S. ARMY, 1916.

31. The last version of NAVAL COURTS AND BOARDS, dated 1937, was reprinted in 1945. Its predecessors were NAVAL COURTS AND BOARDS 1923, and NAVAL COURTS AND BOARDS 1917. Prior to the publication of NAVAL COURTS AND BOARDS 1917, the procedural law was set down in Navy Regulations and court-martial forms were contained in "Forms of Procedure for Courts and Boards" published in 1902 and 1910. NAVAL JUSTICE. Pp. vi, 599. G.P.O. Washington, D.C. (1945), prepared under the direction of the office of the Judge Advocate General was a textbook supplement to NAVAL COURTS AND BOARDS 1937.

Justice whether or not it is under the jurisdiction of the Navy. Prior to the effective date of the Code, when not serving under the Navy, the Coast Guard had its own disciplinary laws.³² When operating under those laws, the Coast Guard had its own manual called *Coast Guard Courts and Boards*, of which editions appeared in 1949, 1935, and 1923.

The Code authorizes the several Armed Forces to prescribe their own regulations for the administration of various fields.³³ To this end both the Navy and Coast Guard have issued Supplements to the *Manual*, each applicable to its own particular Armed Force. The Naval Supplement³⁴ includes regulations supplementing the *Manual*, material as to Courts of Inquiry and Investigations, regulations as to Admiralty claims procedure, instructions as to the delivery of naval personnel to civilian authorities and other matters. The Coast Guard Supplement³⁵ contains, substantially, the same material as is contained in the Naval Supplement.

The Army and Air Force have taken advantage of this authority to prescribe regulations affecting matters peculiar to their services in another way. They have issued "Regulations," "Special Regulations" and other orders implementing this power, but have not compiled them in one publication. The Army issues a "Pocket Part" to be inserted in the *Manual*, which contains some of these regulations, and which refers the reader to the various publications wherein the others can be found. Similarly, the Air Force has issued regulations of this sort but has not, as yet, published either a pocket part or a supplement.

Holdings, Decisions and Opinions

*Court-Martial Reports.*³⁶—These reports are the official medium through which the holdings, decisions and opinions of the Judge Advocates General,³⁷ the Boards of Review³⁸ and the United States Court of

32. The Articles for the Discipline of the United States Coast Guard. Title 14, U.S. Code, Act. of 4 August 1949, 63 STAT. 495.

33. *E.g.*, UCMJ arts. 15(b), 15(c), 22(a), 28, 135, 50 U.S.C.A. §§ 571, 586, 592, 731 (1951).

34. Naval Supplement to the MANUAL FOR COURTS-MARTIAL 1951.

35. Coast Guard Supplement to the MANUAL FOR COURTS-MARTIAL 1951.

36. Published by Lawyers Co-operative Publishing Company, Rochester, N.Y. Volume 1 is dated 25 February 1952, Volume 4 is dated 15 Sept. 1952.

37. UCMJ art. 1 (3-4), 50 U.S.C.A. § 551 (1951), provides: "(3) 'Navy' shall be construed to include the Marine Corps and, when operating as a part of the Navy, the Coast Guard; (4) 'The Judge Advocate General' shall be construed to refer, severally, to the Judge Advocates General of the Army, Navy, and Air Force, and, except when the Coast Guard is operating as a part of the Navy, [i.e., when so assigned] the General Counsel of the Treasury Department." The said General Counsel occupies a civilian status as distinguished from the military status of a Judge Advocate General. For an informative illustrated account of the Coast Guard as a part of the Navy, see *The Coast Guard in War and Peace*, Captain S. H. Evans, U.S. Coast Guard, Naval Institute Proceedings, December 1948, pp. 1545-1556.

38. UCMJ art. 66, 50 U.S.C.A. § 653 (1951), provides for the constituting of Boards of Review, their duties and authority. There are presently the fol-

Military Appeals³⁹ are published.

The preface of Volume One indicates, in part:

"a footnote is placed at the first page of the appropriate Board of Review decision indicating that a petition [to the United States Court of Military Appeals] has been granted, denied, or is pending. In those instances where the petition is indicated as 'pending' the order of the court thereon will be published in a subsequent volume. When a Board of Review decision is not reported, orders of the United States Court of Military Appeals denying review in such a case are not published."

It is further stated that:

"The decisions are headnoted to indicate the salient points involved and the headnote numbers have been set in rubrics in the text of the decision where the point of law is set forth. For cross reference purposes the titles of the headnotes are classified according to relevant topics in the 'Digest of Opinions—The Judge Advocates General of the Armed Forces'. In appropriate cases references are made to standard law publications and to legal decisions. . . . These reports replace the publications entitled 'Board of Review and Judicial Council' ('BR-JC' of the Army), 'Court-Martial Orders' ('CMO' of the Navy) for Naval Justice cases, and the 'Court-Martial Reports of the Judge Advocate General of the Air Force' ('CMR (AF)' of the Air Force)."

The contents of the *Court-Martial Reports*, as presently formed or as altered in scope of coverage by the publication of the United States Court of Military Appeals decisions in a separate edition will, of course, constitute a primary source of case law under the Uniform Code of Military Justice. One of the useful features of these reports is a "key to abbreviations of Military and Naval publications."

*Digest of Opinions*⁴⁰ (*The Judge Advocates General of the Armed*

lowing Boards of Review; Army—seven boards (all members of which are military personnel); Air Force—eight boards (all members of which are military personnel); Navy—seven boards (on each of which there is one civilian member); Coast Guard—one board (on which there is a civilian member). All of these boards are located in Washington, D.C. See UCMJ art. 68, 50 U.S.C.A. § 655 (1951), which provides authority for the establishment of Judge Advocate General Branch Offices with Boards of Review.

39. UCMJ art. 67, 50 U.S.C.A. § 654 (1951), provides for the establishment of a Court of Military Appeals and prescribes the functions, duties, and authority thereof. It is contemplated that the decisions of the United States Court of Military Appeals will appear in a separate publication. The revised rules of practice and procedure before this tribunal are contained in 17 FED. REG. 2046-2049 (1952).

40. The material herein is arranged and classified under a plan protected by copyright of the Lawyers Co-operative Publishing Company, Rochester, N.Y. This company has also published a *Scheme Book for Military Law Digest with Scope Notes and Instructions* (1951). Pp. ix, 295, of which the preface claims "this master scheme is an elaborate, detailed, and comprehensive plan designed to provide a permanent yet flexible system of classification embracing the multitude of questions which confront the Judge Advocates General, Judge Advocates or Legal Officers, and members of military courts and commissions." It is further claimed that this *Scheme Book* was prepared after a

Forces).⁴¹ — The first volume of this digest is dated 30 June 1952, which date coincides with the publication date of Volume 3, *Court-Martial Reports*.

In the preface, it is said:

“This initial volume . . . cumulates the quarterly issues covering the period July 1, 1951 through June 30, 1952. It contains digests of selected opinions and decisions of The Judge Advocates General of the Army, Navy, and Air Force, the General Counsel of the Treasury Department and the Boards of Review in their respective offices;⁴² the United States Court of Military Appeals; other governmental departments and agencies;⁴³ and Federal and State Courts.”⁴⁴

It is further claimed that:

“These opinions and decisions furnish a working body of military law and have been selected primarily for the use and guidance of judge advocates, law specialists, claims officers, members of military courts, and others connected with the administration of military law. Each opinion contained in the Digest includes a summary of the facts to the extent necessary to explain the basis of the legal holding involved. In appropriate cases, references have been made to standard legal publications.”

careful and thorough study of numerous military publications including the *MANUAL FOR COURTS-MARTIAL 1951*; the Naval Supplement thereto, the various armed forces regulations and also with the help of various nonmilitary publications such as *AMERICAN JURISPRUDENCE*, *AMERICAN LAW REPORTS DIGEST*, *UNITED STATES DIGEST* and the *AMERICAN LAWS OF VETERANS*. For those who may have occasion to use such a plan this *Scheme Book* should prove of immense value.

41. UCMJ art. 1(2), 50 U.S.C.A. § 551 (1951), provides: “‘Armed Force’ shall be construed to refer, severally, to the Army, the Navy, [which includes the Marine Corps] the Air Force, and, except when operating as a part of the Navy, the Coast Guard.”

42. In general, the Board of Review cases released for publication herein are selected. Prior to the enactment of the Uniform Code of Military Justice, the Navy did not have a Board of Review of the type provided for in this Code. On 10 March 1945, the Navy established a so-called “Board of Review” that functioned in an advisory capacity to the Navy’s Judge Advocate General. The advisory opinions of this board are presently in the library of the said Judge Advocate General in Washington. The Army and Air Force Boards of Review system in existence prior to 31 May 1951 established the basic pattern for the present system. The “Uniform Rules of Procedure for Proceedings in and before Boards of Review” are contained in 16 FED. REG. 443-45 (1952), in Appendix IV of the Naval Supplement to the *MANUAL FOR COURTS-MARTIAL 1951*, in Chapter XX of the Army “Cumulative Pocket Part” to said *MANUAL* and in Appendix IV of the Coast Guard Supplement to said *MANUAL*. The function of the Boards of Review can be truly judicial. It is not unreasonable to feel that the caliber of the decisions of these Boards will be enhanced in proportion to the ability and efforts of counsel as reflected in briefs and arguments. For an excellent treatment of its subject, see WIENER, *EFFECTIVE APPELLATE ADVOCACY* (1951). Pp. xv, 591. Prentice-Hall, Inc., New York, N.Y., which, although not specifically directed to appellate work before military tribunals discusses principles applicable thereto.

43. I.e., decisions of the Comptroller General, the Attorney General and the Administrator, Veterans Administration.

44. Including decisions of the United States Court of Claims, which court has played an important role in the development and interpretation of military law.

This digest accumulates in one place the selected material which, as previously published, took various forms and was found in a number of publications. It should be recognized, however, that in brevity, which is a digest value, may lie shoals for the unwary. The scheme of material arrangement used in this digest corresponds with that used in the *Court-Martial Reports*.

As a convenient source of information from which the research of a particular problem can be launched this digest is extremely useful. Of course, the quarterly pamphlet issues contain coverage of current information.

*Court-Martial Reports of the Judge Advocate General of the Air Force.*⁴⁵—These reports, limited to the military justice activities of the Air Force, contain the "long form"⁴⁶ holdings and opinions of the Judge Advocate General of the Air Force, its Judicial Council and its Boards of Review.

The general format of these reports is the same as that of the *Court-Martial Reports*. A notable value is the easing of research because of the indexing and headnoting systems employed. Because the military justice operations of the Air Force for the period covered by these reports were based on a military code⁴⁷ which bears substantial resemblance to the Uniform Code of Military Justice in many particulars, these volumes are a worth-while source of material adaptable, where appropriate, to the present system of military justice.

*Judge Advocate General's Department (U. S. Army) Board of Review.*⁴⁸—In the foreword of the first volume of this series of reports which contain holdings, opinions and reviews, it is said:

45. Published under an arrangement with the Lawyers Co-operative Publishing Co., Rochester, N.Y. These reports have been superseded by *Court-Martial Reports*. The entire series consists of four volumes, the first dated 1 November 1949, the fourth dated 11 October 1951. Volume 4 contains tables and an index covering the series. The creation of the Air Force as a separate Armed Force was made effective 18 September 1947 by the National Security Act of 1947 (Act of 26 July 1947) c. 343, 61 STAT. 495. The Act of 25 June 1948, 62 STAT. 1014, established the Office of the Judge Advocate General, United States Air Force. The first appointment to that office was made effective 8 September 1948.

46. I.e., detailed opinions as to facts and/or discussions as distinguished from "short form" holdings which found the record of trial legally sufficient to support the findings of guilty and the sentence without any discussion of the facts or arguments.

47. Title II, Act of 24 June 1948, c. 656, 62 STAT. 627.

48. Volume I, prepared in 1944, covers 1929-1930 cases; Volume 81 (1949) completes the series. All were prepared by the office of the Judge Advocate General, U.S. Army, Washington, D.C. This office also prepared two volumes of Tables and Indices to this series: (1) covering volumes 1-50 (for the period 1929-1945), (1949), and (2) covering volumes 51-81 (for the period 1945-31 January 1949), (1949). Prior to 1929 the holdings and opinions of these Boards of Review were attached to the respective records of trial which are filed in the National Archives.

"The Board of Review was first established in 1918 by the Judge Advocate General (office Memo: JAG 321.4, 6 August 1918). . . .⁴⁹ Digests of selected holdings and opinions of the Board of Review appear in the Digest of Opinions of The Judge Advocate General of the Army, 1912-1940, as well as in the 1912-1930 compilation, and are currently being published in the monthly Bulletin of The Judge Advocate General of the Army [which has been replaced by the Digest of Opinions of The Judge Advocates General of the Armed Forces]."

The foreword asserts that:

"The present collection contains the holdings, opinions and reviews rendered since July, 1929, and is primarily for the use and convenience of the Boards of Review in Washington and abroad.⁵⁰ The first endorsement of The Judge Advocate General is included only where there is a difference of opinion or some material addition to the Board of Review's discussion. 'Short holdings' which find the record of trial legally sufficient to support the findings of guilty and the sentence, without any discussion of the facts or arguments, are not included."

Commencing 1 February 1949, the revised Articles of War became effective.⁵¹ Article 50 of that Code⁵² provided for an additional type of appellate review by the establishment of a Judicial Council "composed of three general officers of the Judge Advocate General's Corps."⁵³

A compilation of twelve volumes⁵⁴ contains the holdings, opinions and reviews of the Board of Review and the holdings and opinions of

49. The requirement that there be a review in the office of the Judge Advocate General or a branch office of certain court-martial determinations, was first contained in War Department General Order No. 7 (1918). This order established the pattern of appellate review and its essential requirements and provisions received statutory endorsement in the Act of 4 June 1920, 41 STAT. 787, as Article of War 50½, Act of 4 June 1920, 41 STAT. 797. In evaluating the importance of these reports it should be noted that it was not until the 1948 revision of Article of War 50, Act of 24 June 1948, 62 STAT. 635, was enacted that Boards of Review were given the authority to weigh the evidence, judge the credibility of witnesses and determine controverted questions of fact. This power is currently contained in UCMJ art. 66(c), 50 U.S.C.A. 653 (1951).

50. As indicated in our discussion of the branch office Board of Review Reports, the Army established five such branch offices. At present there are no branch offices in any of the services.

51. For a history of Articles of War revisions from 1920 to the UCMJ see § 1, c. II, Act of 4 June 1920, 41 STAT. 787, as amended by acts: of 20 August 1937, 50 STAT. 724—amending Arts. 50½ and 70; 1 August 1942, 56 STAT. 732, amending Art. 50½; 14 December 1942, 56 STAT. 1050, amending Art. 114; and 15 December 1942, 56 STAT. 1051, amending Art. 52, as amended by the Act of 24 June 1948, Pub. L. 759, 80th Cong., 2d Sess., 62 STAT. 627.

52. Act of 24 June 1948, 62 STAT. 635.

53. Briefly stated, the Judicial Council performed the following functions: (1) reviewed records of cases requiring confirmation by the President; i.e., sentence of death or trial of general officer involved; (2) reviewed records of cases involving dismissal or reduction of an officer, suspension or dismissal of a cadet or imprisonment for life and (3) review of certain other cases forwarded to the Judicial Council by direction of the Judge Advocate General.

54. Volume 1 (1949)—Volume 12 (1951), and a cumulative index (1951)—all prepared by the office of the Judge Advocate General, Washington, D.C. Each volume contains a separate index and tables covering the material collected therein.

the Judicial Council rendered after 31 January 1949, and prior to the enactment of the Uniform Code of Military Justice.

For research purposes, these holdings and opinions (as well as the various branch office reports) furnish an immense and varied coverage of the many-sided aspects of court-martial functions. Of particular importance is the fact that many of the punitive articles of the Uniform Code of Military Justice are substantially similar to the Articles of War that were in effect immediately prior to 31 May 1951. Therefore, insofar as this similarity exists, these reports constitute a source of case law which has present application. They have value, too, in connection with the sentences involved in the reported cases and the appellate action taken in connection therewith because the table of maximum punishments and the general rules applicable thereto as contained in Chapter XXVI of the *Manual for Courts-Martial, U. S. Army, 1949* were incorporated in large measure into Chapter XXV of the *Manual for Courts-Martial 1951*.

Judge Advocate General's Department (U. S. Army) Branch Office Boards of Review.—A Branch Office of the Judge Advocate General with the United States Army Forces in the British Isles was established on 22 May 1942, and on 9 November 1942, this office became the Branch Office of the Judge Advocate General with the European Theater of Operations. The holdings, opinions and reviews of this branch office are contained in thirty-four volumes.⁵⁵ A similar branch office for the China-Burma-India Theater of Operations was established on 27 October 1942, and on 24 October 1944 this office was redesignated the Branch Office of the Judge Advocate General with the United States Forces in the India-Burma Theater. The reports of this branch office are contained in three volumes.⁵⁶

A similar branch office for the Pacific Ocean Areas was established on 25 September 1944 (one volume of reports);⁵⁷ for the North African and Mediterranean Theaters of Operations on 8 March 1943, which on 1 November 1944 was redesignated the Branch Office of the Judge Advocate General with the United States Army Forces in the Mediterran-

55. Volume 1 B.R. (ETO) (1942-1943), 1945—Volume 34 B.R. (ETO) (1945-1946), 1946. These were prepared by the office of the Judge Advocate General, Washington, D.C. A two volume digest-index, plus a supplement index for the period 1 June 1945—1 November 1945, was prepared by the Branch Office for this series of reports in 1945.

56. Volume 1 B.R. (CBI-IBT) (1943-1944), 1946—Volume 3 B.R. (CBI-IBT) (1945), 1946, prepared by the office of the Judge Advocate General, Washington, D.C. There is a one volume index prepared by the Military Justice Division of the office of the Judge Advocate General, Washington, D.C., 1952, for this series, the South West Pacific and Pacific series and the Pacific Ocean Areas volume of reports.

57. Includes CMPOA 15—CMPOA 379 (1944-1945), prepared by the office of the Judge Advocate General, Washington, D.C., 1946, with index referred to *supra* note 56.

ean Theater of Operations (seven volumes of reports),⁵⁸ and for the South West Pacific Area on 11 July 1942 which, until 25 September 1944, was also empowered to serve the South Pacific Area and which, on 30 June 1945, was redesignated the Branch Office of the Judge Advocate General with the United States Army Forces in the Pacific (four volumes of reports).⁵⁹

What was said about the Board of Review and Judicial Council reports applies with equal force to the branch office reports. Many of these reports consist primarily of a setting forth of the pleading involved in the particular case, a summary of the evidence adduced by the prosecution and the defense, an evaluation of that evidence by the Board of Review, a statement of personal data concerning the accused and the holding of the Board of Review. Even with such reports, where there has not been a substantial change from the Article of War alleged to have been violated to the counterpart punitive article of the Uniform Code of Military Justice, these determinations have value as precedents.

Court-Martial Orders (U. S. Navy).—The Navy published through the Government Printing Office, Washington, D. C., in digest form, selected court-martial decisions and the action taken in connection therewith by the Judge Advocate General. This material appeared in pamphlets issued at irregular intervals during the year.⁶⁰

For all such reported cases for the period 1916-1937, there is a two-volume compilation with a one-volume index.⁶¹ These volumes include all that was contained in the pamphlet issues and replace them.

For the period 1937 to June 1951, there are pamphlet issues, with yearly indices up to the year 1948. Thereafter the only index matter is as contained in each issue.

The value of most Court-Martial Orders relating to naval justice prior to the Uniform Code of Military Justice is limited. Of course, for historical background and for particular situations not changed by

58. Volume 1 B.R. (NATO-MTO) (1943-1944), 1946—Volume 7 B.R. (NATO-MTO) (1945), prepared by the office of the Judge Advocate General, Washington, D.C. In 1944, the Branch Office with the North African Theatre of Operations prepared a consolidated compilation with digests of selected reviews and opinions covering the period from the establishment of the Branch Office through 31 May 1944.

59. Volume 1 B.R. (A-P) (1942-1944), 1946—Volume 4 B.R. (A-P) 1946, prepared by the office of the Judge Advocate General, Washington, D.C. There is an index as referred to *supra* note 56.

60. For the period 1909 to the effective date of the Uniform Code of Military Justice these are in bound yearly volumes. The last pamphlet issue published is numbered CMO No. 6-1951, dated June, 1951. For courts-martial orders prior to 1916, there is a Naval Digest, 1916, containing digests of selected decisions of the Secretary of the Navy and opinions of the Judge Advocate General of the Navy, (G.P.O., 1921). Naval Digest 1921 (G.P.O., 1923) contains digests of selected decisions and opinions for the period 1916-1921.

61. Volume I: 1916-1927 (G.P.O., 1940); Volume II: 1927-1937 (G.P.O., 1941); Cumulative Index, (G.P.O., 1940).

the new Code, these Court-Martial Orders are worthy of consideration. Because of general availability to service activities in the field, they constitute a basic source of research for such activities.⁶²

*Bulletin of the Judge Advocate General of the Army.*⁶³ — This publication contained the same type of information as is now published in the *Digest of Opinions of the Judge Advocates General of the Armed Forces* by which it was replaced in 1942.⁶⁴

*Digest of the Judge Advocate General of the Air Force.*⁶⁵ — This is the Air Force counterpart of the *Army Digest of Opinions* for the period September 1948 to 31 May 1951. The opinions published purport to have been selected with a view to assisting Judge Advocates in handling problems most commonly encountered in the field.

*Opinions of the Judge Advocate General of the Navy.*⁶⁶ — These are the full opinions rendered. No digest form of publication covering these opinions prior to July 1, 1951, exists.

*United States Coast Guard Law Bulletin.*⁶⁷ — This monthly publication refers to itself as "an official medium for furnishing advice on legal matter of general interest, and may be cited as authority for administrative action having legal implication." This *Bulletin* covers, among other things, Coast Guard decisions and opinions, Admiralty

62. For a digest of opinions and decisions appearing in Court-Martial Orders (from 1916 to April 1945) arising from Navy courts-martial see BISHOP AND BRANDENBURG, *NAVY TRIALS DIGEST* (1947). Pp. 206. Wolfer Printing and Engraving Co., Los Angeles, Calif.

63. Consists of ten volumes (Volume I, January-December, 1942), G.P.O., 1943; quarterly pamphlet issue, number 2, Volume X (April-June 1951), G.P.O., 1952, is the last regular issue, pamphlet number 3 of Volume X, G.P.O., 1952, contains an index and tables to Volumes V-X. Volumes II and IV contain tables and indices.

64. For opinions of the Judge Advocate General prior to 1942, three valuable digests exist which cover the period back to 3 September 1862. These digests, which contain selected opinions, are: (1) 1912 (G.P.O., 1917); (2) 1912-1940, (G.P.O., 1942), a valuable feature of which is a subject key arrangement to Military Laws of the United States, and (3) Supplement 1 to the *Digest of Opinions, 1912-1940* (G.P.O., 1942). While there were various interim indices and even though the above enumerated digests were selective in matter presented, the use of them, in most instances, will constitute a sufficient research for the periods covered.

65. Volume 1 (for the period September 1948-December 1949, consisting of three pamphlet issues), G.P.O., 1950; Volume 2 (four quarterly pamphlet issues for 1950), G.P.O., 1952; Volume 3 (two pamphlet issues for the year 1952 until replaced by the *Digest of Opinions of the Judge Advocates General*).

66. These cover the period 1912-1952. Some of these opinions have been incorporated into reported Court-Martial Orders and where this has been done the opinion involved has been so marked in the files of the library of the Judge Advocate General of the Navy. There is no published index covering these opinions although there is a subject matter index in said library. These opinions are available only with permission of the office of the Navy's Judge Advocate General.

67. Number 1 is dated 15 January 1933, number 201 is dated December 1952. (United States Coast Guard, Washington, D.C.) It is stated that "this Bulletin is for the exclusive use of Coast Guard Personnel."

matters, decisions of the Comptroller General and opinions of the Attorney General.

Opinions of the Judge Advocates General When Acting Upon Applications for New Trials.— Article 53, of the Act of 24 June 1948,⁶⁸ authorized the Judge Advocate General of the Army,⁶⁹ upon application of an accused person and upon good cause shown, in his discretion, to grant a new trial or to vacate a sentence, restore rights, privileges, and property affected by such sentence and substitute for a dismissal,⁷⁰ dishonorable discharge, or bad conduct discharge previously executed, a form of discharge authorized for administrative issuance, in any court-martial case in which application was made within one year after final disposition of the case upon initial appellate review. There were certain provisos contained in the article which need not be considered here.

Under date of 31 December 1950, the Army compiled a volume entitled *Memorandum Opinions of the Judge Advocate General of the Army, when Acting upon Applications for Relief under Article of War 53, 1949-1950*. In an explanatory letter contained in this volume, it is said, in part:

“The action taken upon each application for relief under Article of War 53 has been accompanied by a memorandum opinion stating the legal reasoning and factual basis upon which the action is founded. . . . In this selection an effort has been made to include the greatest variety of the questions of law discussed in the determination of these applications, avoiding unnecessary repetition. The opinions herein have been abridged, in some cases, to eliminate repetition and extraneous matter, such as the course of litigation in the civil courts, and the detailed quotation of specifications under which the applicants were found guilty. . . .”

Article of War 53 was repealed by section 14 (a) of the Act of 5 May 1950.⁷¹ Section 12 of the Act of 5 May 1950,⁷² gave to the Judge Advocate General of any of the Armed Forces the same general authority as was contained in Article of War 53 for “any court-martial case involving offenses committed during World War II, in which application is made within one year after termination of the war [deemed to be May 31, 1952 for this section] or after its final disposition upon initial appellate review whichever is the later.”

68. 62 STAT. 639 (1948).

69. Subsequent to 8 September 1949, the Judge Advocate General of the Air Force exercised this authority in connection with Air Force personnel.

70. The separation of an officer pursuant to court-martial sentence is effected by a dismissal which is in all respects, equivalent to a dishonorable discharge. See *MANUAL FOR COURTS-MARTIAL, U. S. ARMY, 1949*, ¶ 116 (c); *MCM 1951*, ¶ 126 (d); *Bureau of Naval Personnel Manual, 1948*, art. C-10334(d).

71. 64 STAT. 147 (1950).

72. 64 STAT. 147 (1950). This section was not enacted as a part of the Uniform Code of Military Justice.

For the Navy and Coast Guard, Executive Order No. 10190⁷³ established "Regulations Relating to New Trials by Courts-Martial and other Relief in Navy and Coast Guard Cases." These related to all trials by general court-martial which resulted in conviction and with respect to any trial which resulted in an approved sentence, including a bad conduct discharge, adjudged by any lesser court-martial for a violation of the Articles for the Government of the Navy or the Disciplinary Laws of the Coast Guard, committed at any time between December 7, 1941, and May 30, 1951, inclusive. In effect, then, this Executive Order gave to the Navy and Coast Guard substantially the same authority conferred in Article of War 53.⁷⁴

Unfortunately, there does not exist a comprehensive collection of all actions taken with regard to these applications. Such actions are a source of valuable military law information. We do not consider here the activities of the boards established pursuant to Section 301 of the Serviceman's Readjustment Act of 1944⁷⁵ or the Navy's "Sentence Review and Clemency Board," which is of non-statutory origin.

Miscellaneous

*Annual Report of the United States Court of Military Appeals and the Judge Advocates General of the Armed Forces.*⁷⁶ — Pursuant to statutory direction:⁷⁷

"the Judges of the Court and the several Judge Advocates General have met from time to time throughout the year, initiated surveys of the operation of the Code, discussed problems common to the Court and to the Services, considered suggested improvements to the Code, and herewith submit their first Annual Report."⁷⁸

73. 15 FED. REG. 8711 (1950).

74. Exec. Order No. 10190, *supra* note 73, provides that "good cause shown" means that the applicant must affirmatively establish that an injustice has resulted from the findings or sentence involved.

75. Act of June 22, 1944, Pub. L. No. 346, 78th Cong., 2d Sess., 58 STAT. 286 (1944), 38 U.S.C.A. § 693 (h) (Supp. 1951).

76. Submitted to the Committee on Armed Services of the Senate and of the House of Representatives, the Secretary of Defense and the Secretaries of the Departments of the Army, Navy, Air Force and Treasury, for the period 31 May 1951 to 31 May 1952 (G.P.O., 1952).

77. UCMJ art. 67(g), 50 U.S.C.A. § 654 (1951).

78. Introduction. An interim report for the period May 31, 1951, to March 1, 1952 (G.P.O., 1952), was submitted by the United States Courts of Military Appeals. This interim report is of importance because, in addition to certain statistical information, it refers to the fact that "An agenda has been prepared, and some of the important questions under consideration are: Plans for expansion of appellate review in the event of war or national emergency; the creation of separate Judge Advocate General Corps for the Navy and Air Force; a possible change in the power of a commander to appoint counsel and the members of a court; limitation on the jurisdiction of special courts-martial to adjudge a bad conduct discharge, or in the alternative a requirement that an officer of the Judge Advocate General Corps or a Law Specialist be included as a member of that court; and suggested improvements in the Code to eliminate unsubstantial procedures which contribute to wasted man-hours and unnecessary Federal expenditures and which are not material to the substan-

This report contains an introduction, a "joint report" and separate reports of the Court, the several Judge Advocates General and the General Counsel of the Treasury Department.

As a part of the "joint report," on page 4, it is said:

"we now make only three recommendations: (1) that legislation be enacted prohibiting special courts-martial from adjudging bad conduct discharges;⁷⁹ (2) that Congress take no legislative action on the other items herein enumerated at this time;⁸⁰ and (3) that this Committee be authorized to file its annual report at the close of each calendar year."

The annual reports may well constitute a weathervane of prospective changes to the Uniform Code of Military Justice.

*Departmental Publications*⁸¹

Each of the Armed Forces publishes "Regulations" by authority of Congress (e.g., Navy Regulations, 1948). These "Regulations," if not in conflict with applicable statutes, are binding on all members of the Armed Forces involved. The ordinary rules of administrative law apply to these "Regulations"; that is, they may not contravene existing law, they must not legislate, they must be uniform, confined to their subject and equitable. If they qualify as "Regulations," the directives have the force of law.

The following departmental or bureau materials warrant special mentioning:

(a) "A Compilation of Legislation Relating to Naval Justice" (1948, pp. viii, 158) was assembled in the Office of the Judge Advocate General of the Navy. An introductory note says:

tial rights of the accused. Other items of importance have been suggested by the services and by civilians, but they more particularly deal with difficulties encountered by the individual services, and, therefore, are not specifically enumerated in this report." (pp. 4-5)

79. With this recommendation, the Navy and Treasury Departments, in their separate reports, disagree. They believe that special courts-martial with punitive discharge powers are necessary to the seagoing services.

80. "Many important questions and controversial matters concerning the administration of Military Justice are the heritage of the Code Committee." (Joint Report, p. 3)

81. Army Regulation 310-20 describes in detail the "Department of the Army Publication Media." Air Force Regulation 5-5 does this for the Air Force publications. Warranting special mention are the Air Force Military Justice Circulars (No. 7 is dated 17 Nov. 1952; the first addition thereto was published in December 1952). The basic circular is No. 5 dated 15 August 1951. They contain pertinent information relating to the administration of military justice. SecNav Instruction 5215.1 contains information concerning the newly established Navy Directive System, which has replaced the Navy Department Bulletin system of directives. For the Bulletin system, there is a 1948 cumulative edition which replaces former cumulative editions and includes all unclassified and restricted circular letters and communications addressed to all naval activities (ALNAVS) which were in effect at that time and had not been incorporated in Navy Regulations, Bureau Manuals or other widely available documents.

"This compilation is limited to Naval legislation related to matters of Naval Justice and endeavors to collect pertinent enactments from 1775 through 1947 [103 documents are set out in this publication]. Prepared, in the first place, as an aid in the preparation of a Naval Law Manual [which was never promulgated as such], it may be useful in the interpretation of naval law on a historical and comparative basis (c.f., e.g., *Rosborough v. Rossell*, 1 Cir., 1945, 150 F.2d 809, 812). While a somewhat similar collection of military law may be found as an appendix to *Winthrop's Military Law and Precedents*, 2d ed., 1895 (Reprint 1920), the last historically complete collection of pertinent naval law was published in 1866. The instant compilation is a convenient place to find, for example, the several 'rules' and 'Articles for the Government of the Navy' of 1775, 1799, 1800, 1862, and 1874, together with their text as codified and brought up to date."

(b) "Methods of Research and Sources of Legal Authority," prepared by the Office of the Judge Advocate General of the Army, 1951 (pp. ii, 161 and exercises), contains extracts from lectures given in a course in legal bibliography for the benefit of officers on duty in that office. While much of the coverage is elementary in nature there is much that is of particular value, e.g., the detailed treatment of the intricacies of various official Army pronouncements such as Special Regulations, Circulars, Bulletins, General Orders and Memoranda. [A similar type of coverage for Air Force material is contained in the Air Force School text, "Legal Bibliography," referred to *infra*.] Army Regulation 1-5 (1946) is an index to Army publications up to 1 January 1946. Currently, all Department of the Army publications are indexed in Special Regulations 310-20-4 and 310-20-5, issued semi-annually. As a sample of the type information that can be found in this publication, it says (p. 140):

"A distinctive and valuable reference work peculiarly adapted to the work of the Military Justice Division consists of the precedents and policy files maintained in the Chief Clerk's Office. It was set up in 1942 and includes a policy file reflecting all actions in the form of opinions, holdings and correspondence taken by the Military Justice Division since that year. It is indexed alphabetically by subject and again by Court-Martial Jurisdiction."

(c) "Recommendations of the Navy Advisory Group on the Uniform Code of Military Justice," (pp. 400), a bound volume containing an index which consists of memoranda from and to the Advisory Board concerning the Navy's attitude on certain problems that developed in the preparation of the Uniform Code of Military Justice. This work is in the library of the Judge Advocate General of the Navy in Washington.

(d) "Comparative Studies Notebook of the Committee on a Uniform Code of Military Justice." This is a volume of unnumbered mimeo-

graphed pages, at the beginning of which Executive Secretary F. E. Larkin says:

"The studies contained in this notebook were prepared by the staff of the Committee on the Uniform Code of Military Justice and evolved as a handy reference and working basis to acquaint those concerned with the drafting of the Code with the problems and differences existing in the practices of the services. The studies were not intended for publication, have not been edited for that purpose, and are included herein in their original form. Each study is based on an Article of War, as amended in 1948, and the interpretation of the Articles as shown in the Manual for Courts-Martial (U.S. Army, 1949) or in other sources when necessary for purposes of clarity. Part II of each study includes the present comparable or similar Article for the Government of the Navy, interpretation of those Articles as shown in Naval Courts and Boards and elsewhere and any pertinent provisions of the proposed Navy Bill (s. 1338, 80th Congress, 1st Session, 1947). Part III compares the differences which exist between Army and Navy practices with particular emphasis on the differences between the provisions of the Articles of War, as amended, and those of the proposed Navy Bill. Part IV lists recommendations and criticisms drawn principally from the many studies and reports on Military Justice and, in some cases, from the hearings before the House Armed Services Committee."

As indicated by Mr. Larkin's description, this notebook is an invaluable source of research material. There is a copy of this work in the law library of the Judge Advocate General of the Navy.

(e) "Military Laws of the United States," ninth edition, prepared by the Office of the Judge Advocate General of the Army, 1949. This work contains pertinent excerpts from permanent and general laws in effect on 1 January 1949. A 1929 edition contains similar information concerning laws then in effect with annotations from 1789 to 1929. The 1939 and 1949 editions cover the decades indicated, are annotated and supplement the 1929 edition insofar as annotations are concerned. The material is not limited to legislation peculiar to the Army but includes laws affecting government departments generally.

(f) "Case Instruction," prepared by the Navy Department Bureau of Navigation, consists of the following booklets, each of which contains ten cases; (1) Collision cases (1929); (2) Grounding cases (1930); (3) Organization and administration cases (1930); (4) Collision cases (1931); and (5) Collision and Grounding cases (1932). In the preface of the first booklet, it is said:

"In 1928 the bureau began the compilation of cases involving collision and casualties, using the records available in the department, for the special use of the General Line Course class at the Postgraduate School. . . . The cases include actual casualties which have happened in the Navy in past years, and are based upon facts which have been drawn

from the records in the department . . . In each case, a short, clear-cut narrative presents the circumstances leading up to the casualty and this, supplemented by the facts brought out in the trial of the case, presents a clear picture of the circumstances, the points of view of those in command and the basis of the action they took in dealing with the situation. The Navy Regulations, Rules of the Road, laws, and court decisions pertinent to each case are also included."

Under date of April 1952, "Case Instruction, Cases 1 through 10, Collisions," was issued by the Bureau of Naval Personnel (NavPers 10882-Part 1). In the preface of this pamphlet is said: "Case Instruction will not be issued on any regular publication schedule, but will be published as cases develop from which instruction can be derived." These booklets contain an extremely interesting and scholarly treatment of the cases covered. They are a "must" reading for anyone concerned with the types of cases to which they relate.

(g) "Teaching the Principles of the Uniform Code of Military Justice and the Manual for Courts-Martial, 1951," (pp. ii., 309), prepared by the Office of the Judge Advocate General of the Navy in 1951, consists of twelve lectures and an introduction. This work adds little interpretative material to the *Manual* but is a convenient division of the more important matter contained in the *Manual* into twelve condensed lectures.

Of some value, which is limited because of the date prepared or because of the nature of the material, are:

(1) "Military Law and Boards of Officers for ROTC [Reserve Officers Training Corps] Students," Department of the Army Pamphlet No. 145-1 (1951).

(2) "The Trial Judge Advocate [now called Trial Counsel] and the Defense Counsel—Military Justice Handbook," Department of the Army Pamphlet No. 27-6 (1949).

(3) "Advanced Military Law as Applied to Navy Courts-Martial," prepared by the Office of the Judge Advocate General, G.P.O., 1949, contains 202 pages plus coverage of several types of pertinent information (e.g., various Navy Regulations and Court-Martial Orders).

(4) "A Seminar of the Uniform Code of Military Justice," Bureau of Naval Personnel, 1951 (pp. ii, 71). A series of lectures touching the highlights of the new Code given to administrative personnel of the named bureau.

(5) "Extracts from the Uniform Code of Military Justice" (pp. v, 52) was prepared by the Bureau of Naval Personnel (April, 1951). It is designed to aid instructors who are charged with explaining the Articles of the Code pursuant to the requirement contained in Article 137 of the Uniform Code of Military Justice.

(6) "Army Information Digest." This digest describes itself as:

"an official Department of the Army publication, is published monthly under the supervision of the Commandant, Armed Forces Information School, Fort Slocum, New York, on behalf of the Army. The Digest provides timely and authoritative information on the policies, plans and operations of the Department of Defense, the Department of the Army, and other services and reserve components."

This compact magazine occasionally contains pertinent military law articles (e.g., "The Military Justice Code and You," F. E. Larkin, July, 1951, pp. 8-12).

UNOFFICIAL PUBLICATIONS

The JAG Journal.⁸² — This publication says of itself:

"Published monthly by the Judge Advocate General of the Navy in the interest of true justice. The mission of the JAG JOURNAL is to promote legal forehandedness among naval personnel charged with the administration of naval law. The goal to be attained through this unofficial medium of instruction and review for those untrained or trained in law is the clear understanding of the basic laws governing Navy life and of the rights and obligations of naval personnel. The editorial policy has been established as one of informality, to insure that articles are presented in interesting form. Its pages are citable in Navy judicial proceedings and will be accorded such weight as the respective courts may determine, when unsupported by official reports of cases referred to therein. Court-martial reports and opinions of the Judge Advocate General remain as the Navy's official sources of precedent, binding upon courts as such. Views on controversial topics expressed herein by individual authors must be construed as being their own personal views, not necessarily bearing the endorsement or approval of the Navy Department or of the Judge Advocate General."

In addition to timely articles of general interest on various facets of military justice, the present format of this publication includes digests "from some of the most recent Court-Martial Reports and opinions of the Judge Advocate General that have been designated for publication in future Court-Martial Reports," and "Criminal Law notes" from federal and state jurisdictions prepared by the Military Justice Division of the Office of the Judge Advocate General.

82. The first issue is dated August 1947. There was no issue for the month of October 1947. There is a cumulative index for issues from August 1947 through December 1951 which will be replaced by a cumulative index extending to December 1952. It may well be that this publication and the next one considered should be classified as "official." The reader can best resolve that question. We classify them as unofficial only for the purposes of this article. Similarly, we have included at the end of this section of the article our consideration of the reports of various committees.

JAG [*Judge Advocate General*] *Chronicle*.⁸³—According to its “mast-head,” this document is:

“Published weekly at The Judge Advocate General’s School, Charlottesville, Va., by direction of The Judge Advocate General, Department of the Army, under the authority of Article 6, UCMJ, and AR [Army Regulation] 10-225. May not be cited as legal authority.”

The *JAG Chronicle* is designed to serve as a training medium for all Judge Advocates.⁸⁴ The frequency of its appearance, the caliber of its coverage and the timeliness and variety of the topics considered all combine to help this paper accomplish its intention admirably. As a weekly publication it purports to provide immediate information concerning opinions and decisions of interest, before their publication, in advance sheets and digests. An editor’s note contains the caveat:

“Unless otherwise stated, the opinions expressed in Case Notes are those of individual Judge Advocates; they do not necessarily represent the views of the Judge Advocate General or the doctrine of the Judge Advocate General’s School.”⁸⁵

These case notes, in concentrated form, are a source of current information from which the reader can go to the full reports in cases that interest him.

The scope of this valuable paper includes consideration of the many-sided problems that confront those charged with the administration of military law. Insofar as its material pertains to the administration of military justice, it is keyed to one or more paragraphs of the *Manual for Courts-Martial 1951* for ready inclusion or noting therein.

83. The first issue of this mimeograph publication, which usually consists of four pages per issue, is dated 4 January 1952. Issue number 52 is dated 26 December 1952 and contains pages 227-230. There is a “cumulative index of keyed material” for the year 1952. Issue number 1 for 1953 is dated 2 Jan. and contains pages 1-4. It is anticipated that publication will continue on a weekly basis. The ninth and last issue of the Sixth Army JAG Gazette, a mimeograph, four page, bi-weekly publication similar in general appearance to the *JAG Chronicle* but containing more information of a personal nature appeared under date of 21 January 1952.

84. Judge Advocates of the Army (the only one of four armed forces which has a Judge Advocate General’s Corps), and of the Air Force are, in general, the counterpart of law specialists of the Navy and Coast Guard, UCMJ art. 6(a), 50 U.S.C.A. § 556 (1951). UCMJ art. 1 (13-14), 50 U.S.C.A. § 551 (1951), provides: “(13) ‘Law Specialist’ shall be construed to refer to an officer of the Navy or Coast Guard designated for special duty (law); (14) ‘Legal Officer’ shall be construed to refer to any officer in the Navy or Coast Guard designated to perform legal duties for a command.” The Army-Air Force counterpart of a “Legal Officer” is called a Staff Judge Advocate. UCMJ art. 6(b), 50 U.S.C.A. § 556 (1951).

85. 1952 Chron 8 (11 January 1952). Except for the date, this is the form of citation used within the pages of the *JAG Chronicle*.

Service Schools Publications.—These mimeographed publications which were prepared for instruction and/or training aid purposes for the use of instructors and students at the respective schools,⁸⁶ are, in general, scholarly works that constitute excellent sources for information concerning the subject matter considered therein, although their availability is limited.⁸⁷

As indicated, many of the materials were prepared prior to the enactment of the Uniform Code of Military Justice. It is therefore necessary to determine in particular instances whether or not the new Code changes what is contained in these publications before the user may

86. The ones with which we are concerned are: The Air Force University, Maxwell Field, Montgomery, Alabama; the Army Judge Advocate General's School, Charlottesville, Virginia; and the U.S. Naval School (Naval Justice), Newport, Rhode Island. The Army school was formerly located in Ann Arbor, Michigan, and the Navy School at Port Heuneme, California. There is no comparable school operated by the Coast Guard. By special quota arrangements Coast Guard personnel attend the course of instruction at the Navy School.

87. Army publications: Text No. 1—Military Justice (Procedural guide for Staff Judge Advocate, 1943); Text No. 2—Military Justice (Comments on common errors and irregularities in court-martial procedure, 1944), Supplement (January 1952); Casebook (Military Justice, 1952); Text No. 3 (Including Supplement 3a)—Military Affairs (Selected materials in the bibliography, procedure and substantive laws of military affairs, 1943); Special Text—Military Affairs 1 (1949); Special Text—Military Affairs 1 (1950); Tentative Casebook (Military Affairs, March, 1952); Text No. 4—War Powers and Military Jurisdiction (Introduction of military jurisdiction and an orientation in the field of military law 1943), Appendix 1 contains a bibliography of military law, including naval and martial law (1917-1942) (1943); Text No. 5—Government Contracts (The principles and practice relating to government contracts, 1943); Special Text—Government Contracts (1949); Text No. 6—Casebook: Government Contracts (A companion volume to Text No. 5, containing edited cases on government contracts, 1943); Text No. 7—Law of Land Warfare (Commentary on the rules of land warfare, 1943); Text No. 8—Claims By and Against the Government (Principles, statutory provisions and procedure relating to Army tort claims, 1944); Special Text—Claims 1 (1949); Text No. 9—Selected Opinions: Military Affairs (Companion volume to Text No. 3, containing current selected opinions of the Military Affairs Division, 1944); Text No. 10 (publication discontinued)—Legal Aspects of Military Aid to the Civil Power (Practical guide to use of federal troops in civil disturbances); Text No. 11—Laws of Belligerent Occupation (1944); Text No. 12 (With supplement)—Government Contracts and Readjustment (A discussion and exploration of the legal and fiscal principles and the administrative regulations and practices involved in War Department Procurement, the financing, renegotiation and termination of contracts and the disposal of property, 1945); Special Text—Military Reservations and Navigable Waters (1949); and the Law Officer Instructional Material (1952). "The last named publication, in somewhat expanded form, has now appeared as Department of the Army Pamphlet No. 27-9 as 'Military Justice Handbook—The Law Officer' which 'is intended primarily to serve as a practical and useful guide for the law officer of a general court-martial', and 'will also assist the president of a special court-martial, as his duties are comparable in many respects to those of the law officer.'"

Navy Publications: Naval Justice Journal (containing articles and notes on subjects of naval law from the school's research and instructional divisions). Volume 1, No. 1 (1945), Volume 1, No. 2 (1946); Naval Justice Casebook, Volume 1, containing cases 1-400, a table of cases and an alphabetized index of cases collected therein and in Volume 2, which contains cases 401-1000 (1945).

Air Force publications: Government Contracts (September 1952); Legal Bibliography (July 1952); Military Affairs (July 1952); Boards (July 1952). In addition, this service has other material which is presently classified as restricted.

safely rely thereon. It is anticipated that in due time the materials will be corrected to reflect the Code changes.

Court-Martial Order Citator.⁸⁸—Of this work the author in his foreword says:

“This publication is a compilation of published Court-Martial Orders citing and/or construing sections of Naval Courts and Boards, 1923 and 1937, the Articles for the Government of the Navy, and the Articles of the United States Navy Regulations (1920).”

This valuable book consists of four citator tables as follows: (1) Sections of Naval Courts and Boards (1937) cited and/or construed by court-martial orders published between 1937 and 1944; (2) Sections of Naval Courts and Boards (1923) cited and/or construed by court-martial orders between 1923 and 1937; (3) Articles for the Government of the Navy cited and/or construed by court-martial orders published between 1916 and 1944; and (4) Articles of the United States Navy Regulations (1920) cited and/or construed by court-martial orders between 1920 and 1944.

Miscellaneous Periodicals

United States Naval Institute Proceedings.—This Institute, located at Annapolis, Maryland, was founded in 1873 “for the advancement of professional, literary and scientific knowledge in the Navy.” The “Proceedings” is illustrated, published monthly, and occasionally contains articles having relation to military law (e.g., Captain R. E. Nelson, U. S. Navy, Bases of Naval Law, March 1949, pp. 269-277; Commander H. J. Webb, U. S. Coast Guard, Uniform Code of Military Justice, July 1950, pp. 723-729; Lieutenant Commander J. K. Taussig, Jr., U. S. Navy, The Commanding Officer and the New Uniform Code, October 1951, pp. 1051-1055).

The Judge Advocate Journal.—Six quarterly issues appeared between June 1944 and the end of 1945. Publication was then suspended and resumed in a new format as of December 1948. It is published quarterly by the Judge Advocate Association, Washington, D.C., an affiliated organization of the American Bar Association composed of lawyers of all components of the Army, Navy and Air Force. This magazine frequently contains excellent articles that are of value to those concerned with military law problems.

The following publications occasionally contain worthwhile articles concerning military law:

88. F. M. Seaman, Lieutenant Commander, U.S. Naval Reserve, 1945 (pp. 93). This work was published privately. It is available in the law library of the Judge Advocate General of the Navy in Washington, D.C.

United States Army Combat Forces Journal. (Infantry Journal 1904-1950: Field Artillery Journal 1910-1950)—Published monthly by the Association of the U. S. Army (Washington, D. C.).

Military Review.—Published monthly by the Command and General Staff College, Fort Leavenworth, Kansas.

Reports of Various Committees

As will be pointed out in the next section of this article there was considerable public clamor about military justice during and after World War II. One result of this clamor was to induce the civilian heads of the military establishments to attempt to get at the facts. To this end committees were appointed. The Navy had the benefit of several committee reports. Mr. A. A. Ballentine of New York made two surveys for the Secretary of the Navy.⁸⁹ Judge Matthew Maguire, of the U. S. District Court for the District of Columbia, made an investigation looking to the amendment of the Articles for the Government of the Navy.⁹⁰

Commodore White, Chaplains' Corps, U. S. Naval Reserve, made a study involving court-martial prisoners of the Navy for the Judge Advocate General of the Navy.⁹¹

A board, under the chairmanship of Professor J. Arthur Keeffe, of Cornell, established by the Secretary of the Navy to review general court-martial sentences imposed by Navy courts during the war, made an extensive survey of military justice in the Navy and submitted a lengthy report.⁹² As distinguished from Professor Keeffe's colored and hypercritical attacks upon military justice as published elsewhere,⁹³ this report is a temperate, thoughtful and fair estimate of the picture in the Navy. It is one of the most illuminating of the reports mentioned.

The Army called on the American Bar Association to make a study of military justice. The president of the Association appointed a committee headed by Arthur T. Vanderbilt, of New Jersey, now Chief Justice of the Supreme Court of that state. This group made an extensive study, held hearings in various sections of the country and filed a report⁹⁴ which was highly critical of the military justice situa-

89. Report of the Ballentine Committee to the Secretary of the Navy, 24 September 1943; Report of the Ballentine Committee to the Secretary of the Navy, 24 April 1946.

90. Report of Maguire Committee to the Secretary of the Navy, 21 November 1945.

91. A Study of 500 Prisoners and Naval Justice, 5 January 1947.

92. Report of the General Court-Martial Sentence Review Board to the Secretary of the Navy, January 1947.

93. Keeffe, *Drumhead Justice: A Look at Our Military Courts*, Reader's Digest, August 1951, pp. 39-44. A point by point refutation of this article was prepared by the School of Naval Justice. Copies of this refutation are available upon request.

94. Report of the War Department Advisory Committee on Military Justice, 1946, 96 Cong. Rec. 1460 (1950).

tion in the Army.⁹⁵

Finally, Mr. Forrestal, then Secretary of Defense, called on Professor E. M. Morgan to head a distinguished committee appointed to make a study and submit proposed legislation for a unified system of military justice to be effective in all the Armed Forces. The result of the work of this committee is the Uniform Code of Military Justice.⁹⁶

This committee prepared a pamphlet⁹⁷ for submission to the congressional committees which considered the proposed legislation. It includes the comments of the committee on the sources of the proposed articles of the Uniform Code of Military Justice and on some of the difficulties experienced in reconciling the language of the Articles of War and that of the Articles for the Government of the Navy. As "references" are included the earlier articles and other sources. This publication facilitates a quick search for the history of a particular article of the new Code. It also affords a ready means of gathering the significance of some of the changes made by the Congress when the articles, as enacted, are compared with the articles as proposed by this committee.

The legislative history of the Code, including committee hearings and committee reports, has been collected and published by the Judge Advocate General of the Navy.⁹⁸

In keeping with the modern trend in judicial interpretation of statutes, this legislative history will be an invaluable source of information relating to the intent of Congress. It may be anticipated that it will be constantly consulted by courts and counsel in military law cases (e.g., *U. S. v. Reeves*, 3 CMR 122, 126 (USCMA 1952)).

95. In 1947, the Office of the Judge Advocate General, Navy Department, prepared a volume (pp. iii, 53) entitled, *Synopsis of Recommendations for the Improvement of Naval Justice*, which consisted of summaries of existing law, the 1943 Ballentine Report, the 1946 Maguire Report, the 1946 White Report, the 1946 Ballentine Report and the 1947 Keeffe Report together with references to Articles of War, the 1946 Vanderbilt Report, a 1947 press release by the Secretary of War concerning this subject matter and indicating the recommendations of the Judge Advocate General of the Navy. This tabulation is in the library of the Judge Advocate General of the Navy.

96. Of the reports mentioned above, only the Vanderbilt report appears to have been published in any readily accessible form. They are all on file in the library of the Judge Advocate General of the Navy. They are also included in the large collection of material which Professor Morgan assembled during his chairmanship of the Code Committee. Professor Morgan gave all these papers to the Harvard Law School Library, where they have been bound in seven large volumes and placed in the Treasure Room.

97. UNIFORM CODE OF MILITARY JUSTICE, TEXT, REFERENCES AND COMMENTARY BASED ON THE REPORT OF THE COMMITTEE ON A UNIFORM CODE OF MILITARY JUSTICE TO THE SECRETARY OF DEFENSE (pp. iii, 167).

98. INDEX AND LEGISLATIVE HISTORY—UNIFORM CODE OF MILITARY JUSTICE, G.P.O., 1950. This volume does not contain the floor debate on the Code. However, a supplement volume embracing these debates is being prepared by the School of Naval Justice.

STANDARD LEGAL PERIODICALS

General Comment.—Some of the best and most enlightening literature in the field of military law is contained in the law reviews. The articles since 1940 are so numerous that it is impossible to do more than mention a few of the best, and then list the others. In so doing, we have grouped them somewhat arbitrarily under rough classifications, although many of the articles could appear under more than one such classification.

The Early Periodical Literature.—The earliest articles⁹⁹ are the work of one Ormsby who was dissatisfied with the treatment of his client at the hands of a Navy court-martial and attempted, in vain, to nullify or reverse the determination of the military court by a proceeding in the Court of Claims. His articles are distinctly uncomplimentary to Naval justice.

Another article used the famed Dreyfus case as the basis of a comparison of the appellate procedures available to Dreyfus in the French civil courts with the civil procedures that would have been open to an American officer in a like case.¹⁰⁰

Of somewhat more than casual interest are two articles discussing what appear to be relatively advanced methods of treatment of general court-martial prisoners in the Army nearly 40 years ago.¹⁰¹ Of historical interest is a generalized discussion of the use of military courts and commissions during the Civil War, written by General H. W. Halleck.¹⁰²

Articles Relating to World War I.—Immediately after World War I, there appeared a series of articles, of a controversial nature, dealing with the administration of military justice in the Army during that war. These articles were in large part centered around the disagreement between General Crowder, (then and during the war, the Judge Advocate General of the Army) and General Ansell, (who had been Acting Judge Advocate General during much of the war, while General Crowder as Provost-Marshal had charge of the administration of the Selective Service Law). This disagreement was the by-product of a considerable volume of public criticism of the Army's court-martial system. The Secretary of War had called on General Crowder to present the true situation to him. General Crowder replied in a long

99. Ormsby, *Imprisonment in the Navy*, 37 AM. L. REV. 696 (1903); *One Requisite for Fair Courts-Martial*, 64 ALBANY L.J. 386 (1902).

100. Ameisen, *The Effect of Judgments of Courts-Martial in France and in America*, 33 AM. L. REV. 75 (1899).

101. Strong, *Administration of Military Justice at the U.S. Disciplinary Barracks, Fort Leavenworth*, 8 J. CRIM. L. & CRIMINOLOGY 420 (1917).

102. Halleck, *Military Tribunals and Their Jurisdiction*, 5 AM. J. INT'L L. 958 (1911).

letter,¹⁰³ which conceded some defects in the system, but in general strongly defended the Army's military justice record. General Ansell, who had resigned by that time, published an article¹⁰⁴ which amounted to a vehement attack on the Army's court-martial system. His principal points of attack were alleged command control, excessively severe sentences and lack of qualified defense counsel. Much the same sentiments as stated by Generals Crowder and Ansell were voiced in the congressional hearings on proposed amendments of the then existing Articles of War, and some famous names in the law entered into the controversy. Professor Morgan took his stand with General Ansell.¹⁰⁵ Professors Wigmore and Bogert opposed them.¹⁰⁶ Others, whose names are less well known, published their views.¹⁰⁷

In the same era a considerable number of articles in the field of military justice, but not addressed particularly to this controversy, were written. Space will permit us to do no more than list them.¹⁰⁸

Between World Wars I and II the important writings in the field of military law were not numerous.¹⁰⁹

103. Entitled, "Administration of Military Justice During the War" (1919). G.P.O.

104. Ansell, *Military Justice*, 5 CORNELL L.Q. 1 (1919). See also: Ansell, *Is There a Difference Between Civil and Military Justice?* 1920 OHIO B. ASS'N J. 134; and Ansell, *Some Reforms in Our System of Military Justice*, 32 YALE L.J. 146 (1922).

105. Morgan, *Existing Court-Martial System and the Ansell Army Articles*, 29 YALE L.J. 52 (1919).

106. Wigmore, *Lessons from Military Justice*, 4 J. AM. JUD. SOC'Y 151 (1921), 24 LAW NOTES 227 (1921); Bogert, *Courts-Martial*, 5 CORNELL L.Q. 18 (1919).

107. Rigby, *Military Penal Law*, 12 J. CRIM. L. & CRIMINOLOGY 84 (1921); Peterson, *Review of General Crowder's Letter on Military Justice*, 89 CENT. L.J. 44, 64 OHIO L. BULL. 289 (1919); Bauer, *Court-Martial Controversy and the New Articles of War*, 6 MASS. L.Q. No. 3, 61 (1921).

108. Bruce, *Military Justice and the Power of Review in Court-Martial Proceedings*, 3 MINN. L. REV. 484 (1919); Carbaugh, *Pleading and Practice under the 96th Article of War*, 13 ILL. L. REV. 1 (1918); Carbaugh, *Separateness of Military and Civil Jurisdiction*, 9 J. CRIM. L. & CRIMINOLOGY 571 (1919); Crane, *Double Jeopardy and Courts-Martial*, 3 MINN. L. REV. 181 (1919); Ferrari, *Military Courts of Paris*, 9 J. CRIM. L. & CRIMINOLOGY 5 (1918) (a comparison with American military courts); Lobb, *Military Authority v. Civil*, 3 MINN. L. REV. 105, 4 VA. L. REG. (N.S.) 897 (1919); McLean, *Historical Sketch of Military Law*, 8 J. CRIM. L. & CRIMINOLOGY 27 (1917); Morgan, *Courts-Martial Jurisdiction over Non-Military Persons under the Articles of War*, 4 MINN. L. REV. 79 (1920); Page, *Military Justice, A Study in Comparative Law*, 32 HARV. L. REV. 349 (1919); Schoetz, *Military Law*, 3 MARQ. L. REV. 26 (1918); Warren, *Spies and the Power of Congress to Subject Certain Classes of Civilians to Trial by Military Tribunals*, 53 AM. L. REV. 195 (1919).

109. The most important of these writings were: Conner, *Reviewing Authority Action in Court-Martial Proceedings*, 12 VA. L. REV. 43 (1925); Covington, *Judicial Review of Courts-Martial*, 7 GEO. WASH. L. REV. 503 (1939); Note, *Jurisdiction over the Accused and Appellate Review*, 39 YALE L.J. 1062 (1930).

Other writings were: Clark, *A Comparison of Civil and Court-Martial Procedure*, 4 IND. L.J. 589 (1929); Colby, *The Power of the President to Remove Officers of the Army*, 15 GEO. L.J. 168 (1927); Curran, *Military Jurisdiction Over Civilians*, 9 NOTRE DAME LAW. 26 (1933); McNemar, *Administration of Naval Discipline*, 13 GEO. L.J. 89 (1925); Snodgrass, *The Judge Advocate General's Department of the Army*, 12 TENN. L. REV. 261 (1934); Taylor, *Military Court-Martial Procedure under the Revised Articles of War*, 12 VA. L. REV. 463 (1926); Underhill, *Jurisdiction of Military Tribunals in the United States*

The Current Periodical Literature.—With the coming of World War II, there developed an upsurge of periodical literature in the field of military law. Undoubtedly the expansion of our Armed Forces under the threat of war stimulated this upsurge even before Pearl Harbor. Thereafter the quickened interest of people in all walks of life in things military nurtured further interest. But, it seems clear that to a large extent the basic reason for this outpouring of articles is to be found in the sensational claims concerning alleged severity of court-martial sentences and inefficiency and injustice of military courts. By the close of the war, military justice had become a matter of public controversy. Most of the lay writing and some of the legal writing on the subject was ill-informed and prejudiced. There is no doubt, however, that these writings were the basic cause of much of the congressional and legal furor which followed.

Prompted by a variety of reasons, and not always clearly aware of the problems of command and discipline, some of the writers took a hostile approach. Of course, other writers rallied to the defense of the military, with greater or less effectiveness.

The number of these articles makes it impossible to discuss them all individually. There are certain writers whose contributions to the subject entitle them to individual mention. Among them are Colonels King¹¹⁰ and Conner,¹¹¹ and General Snedeker.¹¹²

We do not minimize the excellent work of many of the other writers. However, we must limit ourselves to a listing of their articles under broad classifications:

I. —*Military Justice in the Army Before the Uniform Code.*

Armstrong, *The Civilian Lawyer and Military Law*, 17 *Tenn. L. Rev.* 903 (1942).

Battle, *Military Tribunals*, 29 *Va. L. Rev.* 255 (1942).

Brand, *Issue of Insanity in the Administration of Military Justice*, 32 *J. Crim. L. & Criminology* 331 (1941).

over Civilians, 12 *CALIF. L. REV.* 75 (1924); Wheless, *Military Law and Courts in the United States*, 15 *GEO. L.J.* 279 (1927); Wigmore, *The Mitchell Court-Martial*, 20 *ILL. L. REV.* 487 (1926); Wigmore, *Demagogic Abuse of Courts-Martial—The Mitchell Court-Martial*, 20 *ILL. L. REV.* 742 (1926); Winship, *Courts-Martial Procedure Compared with Criminal Procedure in Civil Courts*, 1 *FED. B.J.* 3 (1932).

110. King, *Jurisdiction over Friendly Foreign Armed Forces*, 36 *AM. J. INT'L L.* 539 (1942); *Legal Education in the Army*, 22 *B.U.L. REV.* 266 (1942); *The Army Court-Martial System*, 1941 *WIS. L. REV.* 311, 3 *ALA. LAWYER* 277 (1942); *A Comparison Between Military and State Courts in Criminal Cases*, *KAN. B.J.* 309 (1943), 2 *LAW. GUILD REV.* 7 (1942).

111. Conner, *The Judgemental Review in General Court-Martial Proceedings*, 32 *Va. L. Rev.* 39 (1945); *Legal Aspects of Determinative Review of General Court-Martial Cases under Article of War 50½*, 31 *Va. L. Rev.* 119 (1944); *Hearsay in Military Law*, 30 *Va. L. Rev.* 462 (1944).

112. Snedeker, *The Uniform Code of Military Justice*, 38 *GEO. L. REV.* 521 (1950); *Jurisdiction of Naval Courts-Martial over Civilians*, 24 *NOTRE DAME LAW.* 490 (1949); *Developments in the Law of Naval Justice*, 23 *NOTRE DAME LAW.* 1 (1947).

Gullion, How the Court-Martial Works Today, 27 A.B.A.J. 765 (1941).
Munro, When a Soldier Breaks the Law, 33 J. Crim. L. & Criminology
245 (1942).

Sabel, Civil Safeguards before Courts-Martial, 25 Minn. L. Rev. 323
(1941).

Sabel, Court-Martial Decisions by Divided Courts, 28 Cornell L.Q. 165
(1943).

Saunders and Meserve, Courts-Martial in the United States Army, 30
Calif. L. Rev. 46 (1941).

Scarborough, Military Justice and the Duties of a Staff Judge Advocate
in the United States Army, 4 Ga. B.J. 5 (1941).

II. —*Military Justice in the Navy before the Uniform Code.*

Colclough, Naval Justice, 38 J. Crim. L. & Criminology 198 (1947).

Pasley and Larkin, The Naval Court-Martial, Some Proposals for its
Reform, 33 Cornell L.Q. 195 (1947).

Peterson, Naval Courts-Martial, 20 Ind. L.J. 167 (1945).

Pittman, Legal Rights in the United States Navy, 16 Fla. L.J. 164
(1942).

III. —*Military Justice in General before the Uniform Code.*

Antieau, Courts-Martial and the Constitution, 33 Marq. L. Rev. 25
(1949).

Armstrong, Protection of Accused's Rights in Courts-Martial, 16 Miss.
L.J. 175 (1944).

Bentley, Military Justice in War Time, 18 Fla. L.J. 245 (1944).

Bowman, Recodifying Army Law, 28 Mich. St. B.J. 21 (1949).

Cook, Military Justice, 22 Texas L. Rev. 16 (1944).

Cramer, Military Justice and Trial Procedure, 29 A.B.A.J. 368 (1943);
14 Mo. B.J. 115 (1943).

Dickinson, New Military Justice Code, 28 Mich. St. B.J. 30 (1949).

Farmer and Wels, Command Control or Military Justice? 24 N.Y.U.L.Q.
Rev. 263 (1949).

Hickey and O'Neil, HR-2575—A Bill to Improve the Administration of
Military Justice, 36 Geo. L.J. 614 (1948).

Hogan, The Soldier's Due Process of Law, 18 Calif. St. B.J. 91 (1943).

Holtzoff, Administration of Justice in the United States Army, 22
N.Y.U.L.Q. Rev. 1 (1947).

Keeffe, University Military Training with or without Reform of
Courts-Martial, 33 Cornell L.Q. 465 (1948).

Mann, Military Justice, 4 Nat. B.J. 125 (1946).

McCarthy, Administration of Justice in the United States Army, 19
Conn. B.J. 194 (1945).

Patterson, Military Justice, 17 Pa. B. Ass'n Q. 30 (1945); 19 Tenn. L.
Rev. 12 (1945).

- Royall, Revision of the Military Justice Process, 33 Va. L. Rev. 269 (1947).
- Saden, Army Justice, 20 Conn. B.J. 106 (1946).
- Smith, Federal Procedure—What of the Court Martial System, 30 Minn. L. Rev. 78 (1946).
- Wigmore, Extra Territoriality of the United States Armed Forces Abroad, 29 A.B.A.J. 121 (1943).
- Army and Navy—Double Jeopardy in Civil Courts, 96 U. of Pa. L. Rev. 117 (1947).
- Military Justice, 33 A.B.A.J. 41 (1947).
- Can Military Trials be Fair? 2 Stan. L. Rev. 547 (1950).

IV. — *Collateral Attack on Court-Martial Judgments.*

This is a topic of increasing interest and importance. For years, the right of federal courts to review the judgments of courts-martial has been an area of great controversy which bids fair to continue. This development has stimulated a considerable number of articles that are of interest and of value to counsel on either side of such a proceeding. For example see:

- Dewitt, Military Tribunals for the Trial of War Criminals, 48 Mich. L. Rev. 881 (1950).
- Earle, Preliminary Investigation—Springboard for Attack by Habeas Corpus, 18 Geo. Wash. L. Rev. 67 (1949).
- Fadel, Review of Courts-Martial by Civil Courts, 25 Tulane L. Rev. 275 (1951).
- Fairman, Some New Problems of the Constitution Following the Flag, 1 Stan. L. Rev. 587 (1949).
- Fratcher, Review by Civil Courts of Judgments of Federal Military Tribunals, 10 Ohio St. L.J. 271 (1949).
- Pasley, The Federal Courts Look at Courts-Martial, 12 U. of Pitt. L. Rev. 7 (1950).
- Sample, Judicial Review of Court-Martial Judgments in Habeas Corpus Proceedings, 24 Texas L. Rev. 503 (1946).
- Schwartz, Habeas Corpus and Court-Martial Deviation from the Articles of War, 14 Mo. L. Rev. 147 (1949).
- Shanahan, Review on Habeas Corpus, 19 Miss. L.J. 239 (1948).
- Stein, Judicial Review of Determinations of Federal Military Tribunals, 11 Brooklyn L. Rev. 30 (1941).
- Wurfel, Military Habeas Corpus, 49 Mich. L. Rev. 493 (1951). (The authors consider knowledge of this article to be essential to counsel on either side of a habeas corpus proceeding.)
- The Scope of Review over Courts-Martial on Habeas Corpus, 41 Ill. L. Rev. 260 (1946).
- Civil Jurisdiction to Review Court-Martial Proceedings, 15 U. of Chi. L. Rev. 483 (1948).

Humphrey v. Smith, 34 Iowa L. Rev. 686 (1949).

Military Law, Courts-Martial and Double Jeopardy, 8 U. of Chi. L. Rev. 586 (1941).

War—Jurisdiction of Civilian Courts, 42 Mich. L. Rev. 198 (1943).

Collateral Attack on Courts-Martial in the Federal Courts, 57 Yale L.J. 483 (1948).

V. —*Jurisdiction of Courts-Martial.*

It has long been recognized that want of jurisdiction has constituted a proper ground of collateral attack in the federal courts of court-martial determinations. The matter of determining the existence or nonexistence of jurisdiction can present difficult questions. Some of these questions are dealt with in the following articles:

Adler, Jurisdiction of Courts-Martial, 23 Notre Dame Law. 599 (1948).

Herbsleb, Jurisdiction of Courts-Martial over an Officer on Terminal Leave, 21 Temp. L.Q. 426 (1948).

Jaworski, Military Trial of Prisoners of War, 7 Tex. B.J. 310 (1944).

Maner, When Is Induction Complete? 21 N.C.L. Rev. 301 (1943).

McLeod, Jurisdiction over Person Discharged and Re-enlisted for Offense Committed During Prior Enlistment, 48 Mich. L. Rev. 234 (1949).

Reynolds, Civilian Personnel Subject to Military Law, 30 Cornell L.Q. 108 (1944).

Snedeker, Jurisdiction of Naval Courts-Martial over Civilians, 24 Notre Dame Law. 490 (1949).

Time When Draftee First Becomes Subject to Military Law, 7 Mo. L. Rev. 169 (1943).

Military Jurisdiction over Inductees, 91 U. of Pa. L. Rev. 751 (1943).

Military Law; Jurisdiction over Civilians, 13 Ford. L. Rev. 122 (1944).

War—Jurisdiction over Civilians, 44 Col. L. Rev. 575 (1944).

Honorable Discharge from Navy Held Bar to Court-Martial for Prior Desertion from Marines, 59 Harv. L. Rev. 1156 (1946).

Jurisdiction of Courts-Martial over Officer on Terminal Leave, 96 U. of Pa. L. Rev. 440 (1948).

VI. —*Articles Dealing with the Uniform Code of Military Justice.*

Beauregard, The New United States Court of Military Appeals, 53 Case & Comment 3 (1952).

Butts, The Uniform Code of Military Justice, 22 Miss. L.J. 203 (1951).

Capello and Dzialo, Civilian Counsel under the Uniform Code of Military Justice, 1 Cath. U. L. Rev. 81 (1951).

Cavanagh, The Uniform Code of Military Justice, 22 Okla. B. Ass'n J. 806 (1951).

Dickinson, The New Military Justice Code, 28 Mich. St. B.J. 30 (1949).

- Keeffe and Moskin, Codified Military Injustice, 35 Cornell L.Q. 151 (1949).
- Landman, One Year of the Uniform Code of Military Justice, A Report of Progress, 4 Stan. L. Rev. 491 (1951).
- Langley, Military Justice and the Constitution, 29 Texas L. Rev. 651 (1951).
- Larkin, The Uniform Code of Military Justice, 32 J. Am. Jud. Soc'y, 171 (1949).
- McBratney, Reform of Military Justice Not Complete, 35 J. Am. Jud. Soc'y 81 (1951).
- Re, The Uniform Code of Military Justice, 25 St. John's L. Rev. 155 (1951).
- Russell, The Uniform Code of Military Justice, 19 Geo. Wash. L. Rev. 233 (1951).
- Sellingsloh and Hodson, Civilian Counsel in General Court-Martial Cases under the Uniform Code of Military Justice, 1952 Wash. U.L.Q. 356 (1952).
- Snedeker, The Uniform Code of Military Justice, 38 Geo. L. Rev. 521 (1950).
- Spindler, The Uniform Code of Military Justice, 50 Mich. L. Rev. 1084 (1952).
- The Proposed Uniform Code of Military Justice, 62 Harv. L. Rev. 1377 (1949).
- United States v. Clay, 20 Geo. Wash. L. Rev. 490 (1952); 27 N.Y.U.L.Q. Rev. 163 (1952).

We close this article with a reference to certain Navy training films¹¹³ which, although perhaps not properly classified as "literature," may be of interest and of value to those concerned with military law. There are now in existence five films.¹¹⁴ While these are films dealing with Navy situations they are usable by other services as training aids.

These films are not the subject of security classification nor is it indicated that they are for official use only. While the authors of this article cannot speak with official authority as to the availability of the films to the public, they consider it safe to say that a request from a bar group to Naval training aid activities for a showing of the films would receive favorable consideration.

113. We are informed that the other services are contemplating the production of similar training films.

114. The Code and You, MN7319(a); Non-Judicial Punishment, MN7319(b); The Summary Court-Martial, MN7319(c); The Special Court-Martial, MN7319(d); The General Court-Martial, MN7319(e). In addition, there are in production six films to be used in connection with UCMJ art. 137, which requires that certain articles of the Code be carefully explained to every enlisted person at indicated times.